



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2015-0046

RIN 1625-AA09

Drawbridge Operation Regulation; Snake Creek; Islamorada, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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**SUMMARY:** The Coast Guard is modifying the operating schedule that governs the Snake Creek Bridge across Snake Creek, at Islamorada, FL. This final rule changes the drawbridge operating schedule for the Snake Creek Bridge by requiring it to open once an hour between 7 a.m. and 6 p.m. The Bridge Owner, Florida Department of Transportation and Local officials requested this action to assist in reducing vehicle traffic backups caused by bridge openings.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type “USCG-2015-0046” in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Coast Guard Sector Key West Waterways Management Division; telephone 305-292-8772, e-mail D07-DG-SECKW-WaterwaysManagement@uscg.mil.

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

##### II. Background Information and Regulatory History

The Snake Creek Bridge in Islamorada, Florida, has a vertical clearance of 27 feet in the closed position. The normal operating schedule as published in 33 CFR 117.331 is on demand except that from 8 a.m. to 4 p.m., the draw need open only on the hour and half-hour. This schedule has been in effect since 2001.

On March 27, 2015, we published a test deviation entitled Drawbridge Operation Regulations; Snake Creek; Islamorada, FL, in the Federal Register (80 FR 16280). We received 63 comments on the test deviation. No public meeting was requested, and none was held.

On September 18, 2015, we published a temporary interim rule and request for comments entitled Drawbridge Operation Regulations; Snake Creek; Islamorada, FL, in the Federal Register (80 FR 56381). We received 98 comments on the temporary interim rule. No public meeting was requested, and none was held.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

Based on the following input, the Coast Guard initiated a test of a new schedule for the Snake Creek Bridge on May 27, 2015:

1. As reported by village and city councils, vehicle traffic caused by frequent openings of the Snake Creek Bridge negatively impacted Islamorada and surrounding communities. The temporary deviation successfully tested a new bridge operation schedule that reduced vehicle traffic caused by bridge openings.

2. On January 8-10, 2013, the Florida Department of Transportation conducted a traffic monitoring study 1400 feet south of the Snake Creek Bridge on US-1. The study found peak traffic volumes occurring around 08:45 a.m. and between 12:15 p.m. and 3:15 p.m. These peak traffic times were used to determine when the Snake Creek Bridge opening schedule could be limited to reduce traffic.

3. The Coast Guard's review found that the types of vessels navigating Snake Creek include sport fishing vessels and catamaran sailboats. Many of these vessels are able to safely transit under the Bridge in the closed position.

### IV. Discussion of Comments, Changes and the Final Rule

During the comment periods for the temporary deviation and the temporary interim rule 161 comments were submitted to the docket. Sixty-three of those comment were received in response to the temporary deviation published on March 27, 2015 (80 FR 16280) and ninety-eight comments were received in response to the temporary interim rule published on September 18, 2015 (80 FR 56381).

One hundred and forty-four comments supported the amended operating schedule

applied during the test deviation and the interim rule which allowed the Snake Creek Bridge to remain on a once an hour schedule between 8 a.m. and 6 p.m. seven days a week and on demand at all other times.

Six comments received opposed the amended operating schedule or suggested a different schedule that was more restrictive than necessary to accommodate vehicular traffic and did not accommodate the reasonable needs of maritime navigation.

Two commenters requested that the start time be moved to 7 a.m. to accommodate the school bus schedule. We agree that a schedule requiring the Snake Creek Bridge to open once an hour starting at 7 a.m. would assist with alleviating vehicular traffic and would not interfere with the reasonable needs of maritime traffic. Therefore, this final rule has been modified to begin the limited opening schedule at 7 a.m. instead of 8 a.m.

One comment suggested that these regulations were not needed after Labor Day. A review of the traffic logs shows that vehicle traffic does not diminish significantly after Labor Day.

One comment suggested the bridge remain on a twice an hour schedule except for weekends and Federal holidays. Based on a review of vehicle traffic patterns, vehicle traffic is heavy throughout the daylight hours and increases during weekends and Federal holidays. Reverting to a 30 minute schedule on weekends and Federal Holidays would cause excessive vehicle traffic which was the purpose of this change in operating schedule. Therefore, this rule does not make an exception for weekends and Federal Holidays.

Two comments suggested placing morning and afternoon curfew hours on this bridge. Placing morning and afternoon navigation closure periods on this bridge would have an overly restrictive impact on commercial waterway users and would not meet the reasonable

needs of maritime traffic.

One comment suggested just three bridge openings a day. Allowing this bridge to open just three times during daylight hours would also have an overly restrictive impact on maritime traffic.

Four comments in the docket file were empty and provided no input.

These comments received during the interim rule comment period have been used to adjust this schedule.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protesters.

### A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is made because vessels may navigate the Snake Creek Bridge during the scheduled opening times or use alternate passages including Channel Five above Long Key, Florida, which is approximately 5.7 nautical miles southwest of Snake Creek Bridge. Channel Five above Long Key, Florida is a fixed US-1 Bridge that has a vertical clearance of 65 feet. Also, vessels with adequate clearance may also pass under

Snake Creek Bridge while it is in the closed position.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated above and in V.A., this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the “FOR FURTHER INFORMATION CONTACT” section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard

will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any

one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “FOR FURTHER INFORMATION CONTACT” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.



## List of Subjects in 33 CFR Part 117

### Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security

Delegation No. 0170.1.

2. Revise §117.331 to read as follows:

§117.331 Snake Creek.

The draw of the Snake Creek Bridge, at Islamorada, Florida, will open on signal, except that from 7 a.m. to 6 p.m., the draw need open only on the hour.

Dated: May 4, 2016

S. A. Buschman,  
Rear Admiral, U.S. Coast Guard,  
Commander, Seventh Coast Guard District  
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